

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7520 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

PRAFULCHANDRA MOHANLAL

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioners
MR SP DAVE, AGP for Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 06/02/97

ORAL JUDGEMENT

Placing reliance upon the Supreme Court pronouncement in the case of STATE OF GUJARAT vs. PATEL RAGHAV NATHA, 10 G.L.R. p. 992, learned Counsel Mrs.Ketty Mehta for the petitioners urges that, the present petition requires a full countenance and the order at Annexure.B dated 24th June 1996 and the notice at

Annexure.C dated 30th July 1996 should be quashed and set aside.

The facts are, for the most part, undisputed. The petitioners had purchased the land bearing Block No. 41 situated at village Valthan under the Kamrej Taluka of Surat District, by registered sale deed dated August 29, 1975. This transaction was mutated in village form no.6 by posting the Mutation Entry No.560 on October 1, 1975, which ultimately, came to be certified under the orders dated April 13, 1976. All of a sudden, on September 19, 1994, the petitioners, after a lapse of about 19 years, received a showcause notice from the Collector, Surat, calling upon them to show cause as to why the Mutation Entry No. 560 dated October 1, 1975 should not be cancelled. It was the opinion expressed by the Collector, Surat that, the above said transaction was bad in law because the agricultural land came to be sold for the non-agricultural purposes. This show cause notice came to be replied by the petitioner no.1 by filing a written reply. Firstly, it was sought to be urged that the entry in favour of the petitioners cannot be set aside after such a long lapse of time. The second contention coming from the petitioners was that, because of certain previous transactions, when they had purchased the property in question under the sale deed dated August 29, 1975, it was purchased along with the standing structure of a factory unit and the annexed non-agricultural land. It appears that, any how, acting upon the show cause notice and disregarding the two principal contentions coming the petitioners, the Collector, Surat, by his orders in revision was pleased to cancel the Mutation Entry in question, under the orders dated June 24, 1996. Thereafter, the petitioners had received a notice under Section 15(b) of the Bombay Land Revenue Code, 1879, saying that, the entry in accordance with the orders of the Collector, Surat in revision is required to be made in the revenue record and accordingly the Mutation Entry No.1229 dated July 30, 1996 has been made and that the petitioner should show cause as to why the said entry should not be certified. The petitioners, therefore, are before me, challenging the above said orders at Annexure.B dated June 24, 1996 and the notice at Annexure.C dated July 30, 1996.

The principal contention coming from learned Counsel Mrs.Ketty Mehta for the petitioners before me is that, the powers of revision could not have been exercised by the Collector, Surat, after a long lapse of time of about 19 years. In support of the contention, the reliance is being placed upon the Supreme Court

pronouncement in PATEL RAGHAV NATHA (supra). In the said decision, a view has been taken while reading the provisions contained in Sections 65 and 211 of the Bombay Land Revenue Code, 1879 that, though no period of limitation is prescribed under Section 211, but discretion under this section must be exercised in a reasonable time, in view of the provisions contained under Section 65. It was a case in which the revisional powers under Section 211 of the Code of 1879 were sought to be exercised after a period of more than a year. The Supreme Court has said that this could not have been done and this time-frame cannot be said to be a reasonable time-frame. Here, as indicated by me earlier, the time gap is of more than 19 years. Therefore, accepting the principle laid down by the Supreme Court in the case of PATEL RAGHAV NATHA (supra), I am obliged to say that, it was not open for the Collector, Surat to revise the said entry and ultimately to come to the conclusion that the entry required a deletion. In the same way, it was not open for the Collector acting under Section 15(b) of the Code of 1879 to say that, a fresh subsequent entry, namely, Mutation Entry No. 1229 was required to be posted and that the petitioners were required to show cause as to why the said entry should not be certified. The present petition, therefore, succeeds and the same is hereby accordingly allowed. The above said orders at Annexure.B dated June 24, 1996 and the notice at Annexure.C dated July 30, 1996 are hereby quashed and set aside. In the same way, Mutation Entry No. 1229 dated July 30, 1996 shall also stand quashed and deleted. Rule is made absolute accordingly, with no order as to costs.

It should be clarified that, as the petition is being decided and disposed by me on the principal contention coming from the learned Counsel for the petitioners, I have preferred not to hear the learned Counsel on other points and they are not decided by me and I have no opinion to express on the same.
